

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

WORTH BEAUTY LLC,

V.

PLAINTIFF,

MICHAEL TODD BEAUTY LP, AND
MTTO LLC

DEFENDANTS.

CASE NO. _____

JURY TRIAL REQUESTED

PLAINTIFF'S ORIGINAL COMPLAINT

Plaintiff, Worth Beauty LLC (“Worth Beauty” or “Plaintiff”) files this Original Complaint against Defendants Michael Todd Beauty LP, formerly known as Michael Todd LP, and MTTO LLC (collectively “Defendants”) and would show the Court the following:

I. PARTIES

1. Plaintiff Worth Beauty is a Virginia limited liability company with its principal place of business at 3101 Richmond Avenue, Suite 200, Houston, Texas 77098. All pleadings may be served on Worth Beauty through its attorney-in-charge, David K. Anderson, Anderson & Cunningham, P.C., Four Houston Center, 1221 Lamar, Suite 1115, Houston, Texas 77010.

2. Defendant Michael Todd Beauty LP (“Michael Todd Beauty”), formerly known as Michael Todd LP, is a Delaware limited partnership with its principal place of business at 648 Port St Lucie Blvd., Port St. Lucie, FL 34953. Michael Todd Beauty may be served with process through its registered agent for service of process, The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801 .

3. Defendant MTTO LLC (“MTTO”) is a Delaware limited liability company with its principal place of business at 648 Port St. Lucie Blvd., Port St. Lucie, FL 34953. As the general partner of Michael Todd Beauty, MTTO is jointly and severally liable for the actions, debts, and obligations of the limited partnership. MTTO may be served with process through its registered agent for service of process, The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801

II. NATURE OF ACTION, JURISDICTION AND VENUE

4. This is an action for (a) infringement of copyrights under the Copyright Act of the United States, 17 U.S.C. §§ 501 *et seq.*; (b) trade dress infringement, unfair competition, and false designation of origin under the Lanham Act, 15 U.S.C. §§ 1051 *et seq.*; (c) common law trade dress infringement; (d) infringement of trademarks under the Lanham Act, 15 U.S.C. §§ 1051 *et seq.*; (e) common law trademark infringement; (f) common law unfair competition; (g) unjust enrichment; and (h) advertising injury through misappropriation of advertising ideas. The state law claims are substantially related to the claims arising under federal law; and as a result, this Court has ancillary jurisdiction over those claims.

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338, and 1367. This Court has federal question jurisdiction over this case because Worth Beauty has brought claims against Defendants under the United States Copyright Act, 17 U.S.C. §§ 501 *et seq.*, and the Lanham Act, 15 U.S.C. §§ 1051 *et seq.* This court has the power to resolve the related state law claims under principles of pendent, supplemental and/or ancillary jurisdiction. This Court also has subject matter jurisdiction of this case under § 1332 because there is diversity of citizenship and the amount in controversy exceeds \$75,000.

6. The Court has specific and general personal jurisdiction over Defendants pursuant to the Texas Long Arm Statute for the following reasons: Defendants are present within or have

minimum contacts within the State of Texas and the Southern District of Texas; Defendants have purposefully availed themselves of the privileges of conducting business in the State of Texas and the Southern District of Texas; Defendants regularly conduct and/or solicit business and engage in other persistent courses of conduct within the State of Texas and within the Southern District of Texas; Defendants have derived substantial revenues from their business activities, including their infringing acts, occurring within the State of Texas and the Southern District of Texas; and Plaintiff's causes of action arise directly from Defendants' activities in the State of Texas and in the Southern District of Texas.

7. More specifically, Defendants directly and/or through authorized intermediaries, ship, distribute, offer for sale, sell, lease, market, and/or advertise infringing products in the State of Texas, and the Southern District of Texas, including but not limited to the marketing, offering for sale, sale, and distribution of Defendants' sonicBLEND automated makeup brush. Defendants solicit customers for their line of products in the State of Texas and in the Southern District of Texas through their Michael Todd Beauty websites, national advertising, appearances on national television, and appearances on national televised shopping networks, including the publication infringing product videos. Defendants sell their line of skin care products, skin care devices, and beauty tools, including the infringing sonicBLEND makeup brush, in the State of Texas and the Southern District of Texas through internet websites, including Michael Todd Beauty, Amazon, Bed Bath & Beyond, and HSN, thereby committing conduct in this state that is in violation of both state and federal law. Defendants sell their line of skin care products, skin care devices, and beauty tools and at brick and mortar stores in the State of Texas and the Southern District of Texas, including Ulta Beauty superstores.

8. Defendants have committed infringing acts both inside and outside the State of Texas and the Southern District of Texas that have caused injury to Worth Beauty within this state, and Defendants regularly do or solicit business, engage in other persistent course of conduct, or derive substantial revenue from goods used or consumed in the State of Texas and the Southern District of Texas, or expect or should reasonably expect the infringing acts at issue herein to have consequence in this state.

9. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b), 1391(c), 1400(a) and/or 1400(b). Defendants have transacted business in this judicial district, and have directly and indirectly committed and/or induced acts of copyright, trademark, and trade dress infringement in this district. Additionally, Worth Beauty is the owner of the copyrights, trademarks, and trade dress that are the subject of this litigation, and Worth Beauty resides in the Southern District of Texas. Worth Beauty developed the blendSMART makeup brush and its associated intellectual property, including copyright protected videos, trademarks, and trade dress, at least in part in the Southern District of Texas. Worth Beauty commercialized and used the protected intellectual property in the Southern District of Texas.

IV. FACTUAL BACKGROUND

10. Worth Beauty develops, markets, and sells cutting-edge beauty tools and products. The company's strategy is to combine technology with innovative design to create beauty products that are easy to use and more effective than conventional tools or methods. It is a growing company that is expanding its product lines through innovation. Worth Beauty's mission is to achieve for makeup application what other automatic tools have done for skincare and oral care.

11. The company's flagship product line is a first-of-a-kind Automated Makeup Brush System™ for the application of makeup and other beauty products, which is sold under

the trademark **blendSMART**. The **blendSMART** brush was the first automatic motorized makeup brush, and the product represents a breakthrough in the beauty industry. Worth Beauty developed the **blendSMART** brush system, and now manufactures, markets, and sells, the **blendSMART** brush system internationally. Worth Beauty is the owner of all intellectual property rights relating to the **blendSMART** automated makeup brush system.

12. Worth Beauty's **blendSMART** rotating makeup brush system includes an automated ergonomic handle and an interchangeable foundation brush head. The interchangeable brush head spins at 190 RPMs and mimics the motion of professional makeup artists to deliver flawless blending. Worth Beauty currently offers a number of additional **blendSMART** interchangeable brush heads, including a blush brush head, definer brush head, powder brush head, and full coverage and finishing brush head, that allow the customer to easily change out the brush head, while utilizing one handle.

13. In April 2015, the **blendSMART** rotating makeup brush debuted on QVC, a television network, specializing in televised home shopping. The **blendSMART** brush was sold as the Doll No. 10 Beauty **blendSMART** Rotating Makeup Brush System, and it was featured on QVC's domestic channel as well as QVC's international channels in England, Italy, Germany, and France. Initially, the product was exclusively available through QVC for a period of six (6) months as required by QVC policy, and the product was very well received by customers and the beauty industry.

14. Today, the **blendSMART** makeup brush system and the additional brush heads are available online through the company's website.¹ Worth Beauty's **blendSMART** products are also available for sale online through Sephora's website² and through websites of domestic and

¹ <https://www.blendsmart.com/>

² <http://www.sephora.com/blendsmart>

international authorized dealers. The blendSMART products may also be purchased at domestic and international brick and mortar prestige boutiques.

15. On September 17, 2014, Worth Beauty filed an application to register the blendSMART trademark with the United States Patent Office (“PTO”) for use in connection with cosmetic applicators, namely cosmetic brushes. The blendSMART trademark claimed standard characters without claim to any particular font, style, size or color. Worth Beauty is the owner of U.S. Registration No. 4,842,589, issued on October 27, 2015, in International Class 21. Worth Beauty is currently seeking federal trademark protection for its unique product mark and logo blendSMART.³

16 Since at least 2014, and well before Defendants’ infringing acts, Worth Beauty has continuously used the blendSMART trademark and product mark and logo to market and sell the blendSMART rotating makeup brush system. Worth Beauty has sold the automated makeup brush and interchangeable brush heads under the blendSMART trademark and product mark and logo since the products’ inception and introduction. Worth Beauty has acquired ownership by adopting and continuously using the blendSMART trademark and product mark and logo in such a way that the public and the industry associates the blendSMART mark with Worth Beauty and its automated makeup brush and accessories.

17. Worth Beauty has developed several other trademarks that it has continuously used to promote and market its blendSMART products, including “A Revolution in Makeup Application™” and “Natural Looking Results with Confidence™.” Worth Beauty has acquired ownership of these trademarks by adopting and continuously using these trademarks in such a

³ A true and correct copy of U.S. Registration No. 4,842,589 issued by the United States Patent Office on October 27, 2015 is attached to this Complaint and incorporated herein by reference as EXHIBIT A.

way that the public and the industry associates these marks with Worth Beauty's automated makeup brush and accessories.

18. Worth Beauty has acquired trademark rights in the inherently distinctive blendSMART name, product mark, and logo, including the product's non-functional dimensions, shape, blendSMART product name, mark and logo, placement of the blendSMART product name, mark and logo on the product's brush handle, and the shape and size of the interchangeable heads. The individual features and elements of the blendSMART automated makeup brush; the combination of such features and elements; and the look, appearance, and image of the product, including its packaging, advertising, color schemes, layout, font selection, marks, logos, and catch phrases, taken as a whole and in combination, identify the brush as originating exclusively with Worth Beauty. This trade dress has developed a secondary meaning and is recognized throughout the industry. The public associates this trade dress with Worth Beauty's blendSMART products. Worth Beauty has spent considerable resources to develop the goodwill associated with this product and its associated intellectual property. As a result, it has substantial economic value and the potential to acquire a great deal more economic value.

19. As part of its marketing and promotion efforts for the blendSMART brush system, Worth Beauty created and published three blendSMART product introduction and tutorial videos, including (1) an introductory product video that describes and demonstrates the blendSMART brush system;⁴ (2) a liquid foundation tutorial that shows consumers how to use the blendSMART brush to apply liquid foundation;⁵ and (3) a powder foundation tutorial that shows consumers

⁴ <https://www.youtube.com/watch?v=KP-MPAb0muo>

⁵ https://www.youtube.com/watch?v=wdYS2UOsE_k

how to use the blendSMART brush to apply powder foundation.⁶ Worth Beauty is the owner of all copyrights to each of the three videos.

20. On August 16, 2016, Worth Beauty filed an application to register its copyright for the introductory product video, “BLENDSMART2016” (Service Request No. 1-3913149631), and the application is currently pending. The introductory product video was first published on May 25, 2016.⁷

21. On August 29, 2016, Worth Beauty filed an application to register the copyright for the powder foundation tutorial, “BlendSMART Powder Application” (Service Request No. 1-3950265111), and the application is currently pending.⁸ The powder foundation tutorial video was first published on March 14, 2016.

22. On January 11, 2017, Worth Beauty filed an application to register the copyright for the liquid foundation tutorial, “blendSMART How-To Liquid Foundation (Service Request No. 1-4332903691), and the application is currently pending. The liquid foundation tutorial video was first published on March 14, 2016.

23. In Summer 2016, Worth Beauty became aware that Defendants were selling a confusingly similar automated makeup applicator under the name and trademark sonicBLEND. Defendants have been having been causing confusion in the market and trading off the goodwill of the blendSMART product. For example, Worth Beauty heard people say that they had seen its products on ABC’s “The View” television show, but it was Defendants’ automated makeup brush that had been presented on The View, not Worth Beauty’s blendSMART brush. Customers, potential customers, and others were confused because the brushes were strikingly similar, if not

⁶ <https://www.youtube.com/watch?v=Q1oG8gWV3ik>

⁷ A true and correct copy of the Copyright Application for “BLENDSMART2016” (Service Request No. 1-391314963) is attached to this Complaint and incorporated herein by reference as EXHIBIT B.

⁸ A true and correct copy of the Copyright Application for “BlendSMART Powder Application” (Service Request No. 1-3950265111) is attached to this Complaint and incorporated herein by reference as EXHIBIT C.

virtually identical, and the Defendants' marketing and promotional materials are deceptively similar. In that particular presentation, the presenter said that Defendants' brush spins (just like the **blendSMART**), even though the Defendants' brush actually vibrates rather than rotates.

24. Defendants manufacture, market, and sell a line of skin care, skin care devices, and beauty tools, and the **sonicBLEND** makeup application brush is among those products. Defendants describe the **sonicBLEND** as a "sonic applicator makeup brush." The **sonicBLEND** system includes an "ergonomically designed" makeup brush handle and an "interchangeable universal brush head."

25. Defendants sell the **sonicBLEND** makeup brush and replacement universal brush heads through the Michael Todd Beauty websites⁹, Bed Bath & Beyond,¹⁰ and Amazon.¹¹ Defendants recently presented the **sonicBLEND** on HSN, a national network providing televised home shopping. The **sonicBLEND** makeup brush and additional brush heads are now available for purchase on HSN's websites.¹²

26. Defendants' logo and trademark for its automated makeup brush, **sonicBLEND**, is confusingly and intentionally similar to Worth Beauty's **blendSMART** logo and trademark for its automated makeup brush. Both logos and trademarks feature two words presented together (**blendSMART** and **sonicBLEND**) with the first word featuring small letters ("blend" and "sonic"), the second word placed in all small capital letters in bold font ("SMART" and "BLEND"), and both trademarks prominently including the word "blend":

⁹ <http://www.michaeltoddbeauty.com/devices/sonicblend/sonicblend.html>;
<http://www.michaeltoddbeauty.com/devices/sonicblend/round-top-sonicblend-brush-head-6.html>

¹⁰ <https://www.bedbathandbeyond.com/store/product/michael-todd-sonic-blend-sonic-makeup-brush/3295872?categoryId=13754>

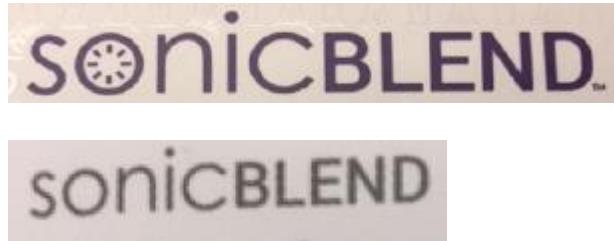
¹¹ https://www.amazon.com/Michael-Todd-SonicBlend-Antimicrobial-Makeup/dp/B01IRGH272/ref=sr_1_1_s_it?s=beauty&ie=UTF8&qid=1483641343&sr=1-1&keywords=sonicblend&th=1

¹² <https://www.hsn.com/products/michael-todd-sonicblend-sonic-makeup-brush-black/8261746>;
<https://www.hsn.com/products/michael-todd-sonicblend-flat-top-makeup-brush/8261873>;
<https://www.hsn.com/products/michael-todd-sonicblend-round-top-brush-head/8261890>

blendSMART®

blendSMART®

sonicBLEND™



27. Worth Beauty discovered that Defendants had published three product videos on the sonicBLEND product page of the Michael Todd Beauty website that were virtually identical, to the three blendSMART product videos published by Worth Beauty and used to market and promote the blendSMART automated makeup brush. The Michael Todd Beauty videos appear to be intentional copies of the Worth Beauty videos. Defendants' use of Worth Beauty's videos is unauthorized.

28. For example, Defendants' video, entitled "Discover SonicBLEND" by Michael Todd Beauty, World's First Antimicrobial Makeup Brush", appears to be a virtual copy of the blendSMART introductory video. As shown below, the script for Defendant's brand video is directly copied from the product video that Worth Beauty created and published to introduce and market its blendSMART products:

blendSMART 2016 Video

blendSMART came from answering a simple question. Shouldn't there be a brush that blends makeup easily and dramatically more effectively than traditional make up brushes and techniques,

Discover sonicBLEND

It all started with a simply question, can a sonic powered makeup brush more quickly and effectively apply foundation and makeup than other makeup applications.

so by taking this simple concept of the blending motion and refining with technology and innovative design, we created **blendSMART**, the first ever automated rotating makeup brush,

It rotates at 190 rpm, that's 3 times per second, which is faster and more consistent than a human being and results speak for themselves.

If you are a liquid foundation fan, let **blendSMART** show you a new way to flawlessly blend makeup every time.

Simply glide the brush over makeup, buffing into skin with up and down and side to side motions until you've got your desired coverage.

It's nearly effortless. And you've got a polished airbrush look thanks to the **blendSMART** rotating makeup brush and your foundation.

blendSMART will achieve for makeup application what other automatic tools have done for oral care or skin care.

blendSMART is a revolution in makeup application.

by taking this simple concept of blending motion and refining it with technology and innovative design, we've created **sonicBLEND**, the world's first antimicrobial sonic powered makeup brush.

It moves at sonic speeds of up to 200 times per second, which is much faster and more consistent than manual and rotary makeup brushes. Also **sonicBLEND** has built in protection.

Let **sonicBLEND** flawlessly blend your foundation every time. If you are a liquid foundation fan, just apply a few dots to key points on your face.

Simply glide the brush over the makeup, lightly blend makeup in long sweeping motions until you get desired coverage.

It is nearly effortless, and you have a polished airbrush look thanks to the **sonicBLEND**, the world's first antimicrobial sonic powered makeup brush

sonicBLEND will achieve for makeup application what all other automatic tools have done for oral care or skin care.

sonicBLEND is a revolutionary makeup application brush.

29. Defendants copied not only the script for Worth Beauty's product video, but also the complete look and feel of the video, including the video shots, sequencing, product placement, and graphics.

30. Defendants also published a video entitled “SonicBlend – How to Apply Liquid Foundation”, which is strikingly similar to the blendSMART liquid foundation tutorial which Worth Beauty created and published to show consumers how to use the blendSMART automated makeup brush with liquid foundation. A side by side comparison shows that the scripts are virtually identical:

blendSMART® Liquid Foundation Application

If you are a liquid foundation fan, let blendSMART show you a new way to flawlessly blend your makeup every time.

Start with your favorite foundation and apply a few dots to key points on your face.

Remember less is more.

Put your foundation brush head which is included in the starter kit into the handle.

Turn on your brush and start blending makeup into your skin.

Simply glide the brush over the makeup, buffing into the skin with side-to-side and up and down motions until you've got your desired coverage.

It's nearly effortless and you've got a polished air-brushed look thanks to the blendSMART rotating brush and your foundation.

Now that's smart . . .

SonicBlend – How to Apply Liquid Foundation

If you are a liquid foundation fan, let sonicBLEND show you a new way to flawlessly blend your makeup every time.

Start with favorite liquid foundation and apply a few dots to key points on your face.

Remember less is more.

Put your foundation brush head included in the starter kit in the handle.

Turn on the brush. Start blending makeup into your skin.

Simply glide the brush over the makeup, buffing into skin with long strokes and sweeping motions until you achieve desired coverage.

sonicBLEND uses gentle sonic movements to easily brush on foundation without leaving lines or streaks for natural looking airbrushed results every time. You get a polished airbrushed look thanks to sonicBlend.

Now that's how you achieve a flawless finish.

Hope you enjoyed the blendSMART tutorial.

We hope you enjoyed the sonicBLEND tutorial.

31. Defendants' third video, entitled "SonicBlend – How to Apply Powder Foundation", is also virtually identical to the blendSMART powder foundation tutorial, which shows consumers how to use the automated makeup brush with powder foundation. For example, the scripts are compared below:

blendSMART Powder Foundation Application

In this tutorial, let's see how to best apply pressed or loose powder makeup using the blendSMART rotating makeup brush.

Today we are demonstrating pressed powder but the techniques are the same for loose.

So grab your favorite pressed powder foundation.

Next swap out the foundation brush head which is included in the starter kit for the powder brush head.

In the off position, swirl the brush head into the powder, tapping off any excess product.

For loose powder, you'll want to shake a little powder into the cap of the foundation and swirl the brush head.

SonicBlend – How to Apply Powder Foundation

In this tutorial, we will see how easy it is to apply pressed or loose powder makeup using the new sonicBLEND sonic powered makeup brush. sonicBLEND is the first ever makeup brush that applies makeup at sonic speeds of up to 200 times per second, and

Today we are demonstrating pressed powder but the techniques are the same for loose.

So grab your favorite pressed powder foundation,

And your sonic brush handle and an antimicrobial brush head. Snap the brush head into handle.

Swirl the brush head in the powder.

For loose powder, you will want to shake a little bit of powder into the cap of the foundation and then swirl the brush head in that. Tapping off any excess product.

Remember, you get better results with less makeup.

Turn on the brush and begin blending makeup into the skin using up and down and side-to-side motions.

It's that simple.

You get a flawless air-brush like finish every time by blending smarter, not harder.

Remember you will get better results with less makeup.

Turn on the brush and begin blending makeup into the skin. Lightly blend makeup in long strokes and sweeping motions of the brush.

It's that simple.

sonicBLEND uses gentle sonic movements to easily brush on foundation without leaving lines or streaks for natural looking air brush like results every time. Get a flawless air-brush finishing by blending with sonic technology.

Now that is smart, I mean **blendSMART**.

Upgrade to the **blendSMART** rotating makeup brush and enjoy your new spin on beauty.

Upgrade to **sonicBLEND**, first ever sonic microbial makeup brush and enjoy your new take on beauty.

32. As with the introductory product video, Defendants copied not only the video scripts, but also the look and feel of the videos, including video shots, sequencing, product placement, and graphics.

33. Defendants' brand video, the powder foundation video, and the liquid foundation videos are published on the Michael Todd Beauty website,¹³ YouTube and Vimeo. Two of the videos – the powder foundation video and the liquid foundation video – are now featured on HSN's website.¹⁴ The videos are published on HSN's **sonicBLEND** product pages and may be

¹³ <http://www.michaeltoddbeauty.com/devices/sonicblend/sonicblend.html>;

¹⁴ <https://www.hsn.com/products/michael-todd-sonicblend-sonic-makeup-brush-black/8261746>;
<https://www.hsn.com/products/michael-todd-sonicblend-sonic-makeup-brush-pink/8261686>

viewed and accessed by HSN's millions of viewers. Defendants' videos have also been published and are available for viewing on various third party websites.¹⁵

34. Defendant's sonic**BLEND** automated makeup brush system is strikingly and confusingly similar to Worth Beauty's blend**SMART** automated brush system, including the use of mark or logo, placement of mark or logo on the brush handle, dimensions, shape, and the shape and size of interchangeable brush heads:



35. Defendant's sonic**BLEND** packaging is strikingly and confusingly similar to the packaging for the blend**SMART**. For example, Worth Beauty's Doll No. 10 Beauty blend**SMART** Rotating Makeup Brush System Starter Kit, includes a light colored box with additional coloring

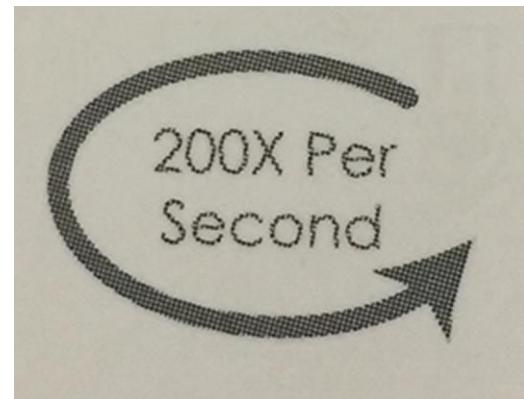
¹⁵ <http://gurubeautypro.info/2016/12/want-flawless-makeup-then-start-using-sonicblend/>

along edges of the box front, a darker box top, darker box sides, and a white bottom. The front of the Doll No. 10 Beauty blendSMART box features a graphic comprised of a small circular arrow with the phrase “360° brush spin” inside. This graphic is intended to emphasize to consumers that the blendSMART makeup brush rotates, thus the use of the circular arrow. On the back of the sonicBLEND box, Defendants have included a small graphic comprised of a small circular arrow with the phrase “200x Per Second” inside. The graphics are shown below:

Doll No. 10 Beauty blendSMART®



sonicBLEND



36. The use of the circular arrow was copied from the blendSMART box and is intended to lead consumers to believe that the sonicBLEND brush rotates like the Doll No. 10 Beauty blendSMART brush.

37. The product descriptions on the back of the sonicBLEND packaging are also very similar to product descriptions on the Doll No. 10 Beauty blendSMART packing:

blendSMART

blendSMART

A REVOLUTION IN MAKEUP APPLICATION

Introducing blendSMART for Doll 10, the first automatic makeup brush that rotates 360° to apply your makeup evenly for a flawless, natural looking finish.

sonicBLEND

sonicBLEND

Reinvent the Art of Makeup Application

sonicBLEND is the first of its kind makeup brush that applies makeup at sonic speeds up to 200 times per second . . .

With an ergonomic handle designed for comfort and control, blendSMART's patent pending design delivers 190 revolutions per minute for fast, even coverage.

Blends Evenly, no lines or streaks (side of box)

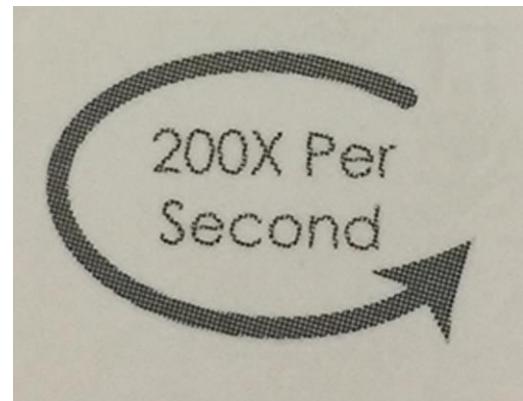
blendSMART is not only **easier to use** with **better results** than a traditional makeup brush, but more **economical** too. **Better blending means less makeup.**

Intended for comfort and control the ergonomically designed sonicBLEND uses gentle sonic movements to . . .

sonicBLEND uses gentle sonic movements to easily sweep on foundation without leaving lines or streaks.

Creates better coverage too so you use less makeup.

38. Defendants' sonicBLEND packaging also has a confusingly similar look to Worth Beauty's blendSMART packaging, including white product box with a colored stripe along the left front side, dark box top, dark box sides, and a white bottom. Worth Beauty's packaging currently features a 360° Spin comprised of a series of circular arrows, the phrase "INTERCHANGEABLE BRUSH HEAD" placed around the outside of the circular arrows and the phrase "360° SPIN" inside the arrow. Defendants' small graphic is confusingly similar to the graphic on the back of the blendSMART box:



39. The use of the circular arrow was copied from the blendSMART box and is intended to lead consumers to confuse the sonicBLEND brush with the blendSMART brush.

Defendants are deliberately trying to mislead and confuse potential customers and the market regarding the competing brushes, and thereby trade off of and gain an economic advantage from blendSMART success and goodwill.

40. Worth Beauty has adopted and continuously used the trademark “A revolution in makeup application™” on the blendSMART packaging, advertising, website, and promotional materials. In the blendSMART product video, Worth Beauty concluded the video with its trademarked phrase, “blendSMART is a revolution in makeup application.” Defendants are now routinely using the same phrase to describe their automatic makeup brush in their marketing efforts and across social media. For example, Defendants closed their sonicBLEND product video by stating that “sonicBLEND is a revolutionary makeup application brush.” Defendants’ posted on Michael Todd Beauty’s facebook page, “Join us today on HSN and jump on the SonicBlend Revolution.”

41. Defendants’ systemic and repeated unauthorized use of Worth Beauty’s intellectual property for a directly competing makeup brush, provided to the same class of customers, through similar marketing channels, has caused confusion and is likely to continue to cause confusion in the future. The Defendants’ actions tend to cause mistakes, and/or to deceive customers, potential customers, vendors, potential vendors, and/or end users into thinking that Defendants and/or their products are somehow approved, sponsored, licensed by, or affiliated with, Worth Beauty.

42. Worth Beauty’s blendSMART and Defendants’ sonicBLEND are marketed and sold to the same prospective customer base and through the same channels of trade, including televised shopping networks, the internet, and brick and mortar stores and boutiques that sell beauty products. Customers, potential customers, vendors, potential vendors, and/or end users

are likely to mistake and/or be confused about the source, sponsorship, origin and affiliation of Defendants' sonicBLEND makeup brush based on Defendants' use of Worth Beauty's blendSMART intellectual property, including copyright protected videos, trademarks, and trade dress.

43. Customers and potential customers have noted and reported similarities between Worth Beauty's blendSMART and Defendants' sonicBLEND products, related videos and packaging and promotional materials, and have been confused as a result of Defendants' use of Worth Beauty's blendSMART intellectual property, including copyright protected videos, trademarks, and trade dress.

44. Defendants' unauthorized activities undermine Worth Beauty's goodwill that would be otherwise associated with the blendSMART product line and negatively impact Worth Beauty's ability to develop and promote the blendSMART brand and to have that brand associated exclusively with its own products.

45. Worth Beauty has been damaged by Defendants' violation of Worth Beauty's blendSMART intellectual property rights.

46. Defendants' sonicBLEND product name, logo, and trademark for its automated makeup brush are intentionally and confusingly similar to Worth Beauty's blendSMART product name, logo, and trademark for its automated makeup brush. Defendants' brand video, powder foundation video, and liquid foundation video are intentionally and confusingly similar, and in many case virtually identical, to the blendSMART brand video, powder foundation tutorial, and liquid foundation tutorial published on blendSMART website and YouTube. Defendants' did not just use Worth Beauty's videos as inspiration for their three product videos. Rather, Defendants copied the scripts for each video and the video production, including the video shots,

sequencing, product placement, and graphics. Defendants directly and intentionally copied Worth Beauty's product videos in violation of federal and state law. Defendants' infringement of Worth Beauty's intellectual property rights is willful and deliberate.

V. CAUSES OF ACTION

COUNT I: FEDERAL COPYRIGHT INFRINGEMENT

47. Worth Beauty refers to and incorporates herein the allegations of Paragraphs 1 through 46 above.

48. The actions and conduct of Defendants set forth above violate 18 U.S.C. § 501. Worth Beauty owns copyrights to three works entitled "BLENDSMART2016," "blendSMART Powder Application," and blendSMART Liquid Foundation Application."

49. On August 16, 2016, Worth Beauty filed an application to register its copyright for the introductory product video, "BLENDSMART2016" (Service Request No. 1-391314963), and the application is currently pending. The introductory product video was first published on May 25, 2016.

50. On August 29, 2016, Worth Beauty filed an application to register the copyright for the powder foundation tutorial, "BlendSMART Powder Application" (Service Request No. 1-3950265111), and the application is currently pending. The powder foundation tutorial video was first published on March 14, 2016.

51. On January 11, 2017, Worth Beauty filed an application to register the copyright for the liquid foundation tutorial, "blendSMART Liquid Foundation Application" (Service Request No. 1-4332903691), and the application is currently pending. The liquid foundation tutorial video was first published on March 14, 2016.

52. These copyrighted works were widely disseminated to the public, including publication of the videos on the blendSMART website, and Defendants had open and easy access to each of these works. Defendants copied these works for their own use and financial benefit and gain without obtaining permission or license from Worth Beauty.

53. Defendants' acts of infringement have caused, and will continue to cause, damage to Worth Beauty, and are causing irreparable harm to Worth Beauty.

54. Defendants engaged in willful acts that infringed the copyrights. Defendants knew that those acts infringed the copyrights.

COUNT II: FEDERAL TRADE DRESS INFRINGEMENT

55. Worth Beauty refers to and incorporates herein the allegations of Paragraphs 1 through 54 above.

56. Defendants conduct and actions set forth above constitute infringement of Worth Beauty's trade dress, unfair competition, and false designation of origin in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a). Defendants have intentionally engaged in conduct that constitutes false advertising, false designation of origin, false or misleading representation of fact tending wrongfully and falsely to describe or represent a connection between Worth Beauty's automated makeup brush and Defendants' automated makeup brush, and an infringement of Worth Beauty's trade dress rights.

57. Defendants' use of Worth Beauty's trade dress has caused and is likely to cause confusion, mistake, or deception in that purchasers and others are likely to assume that Defendants' automated makeup brushes marketed under Worth Beauty's blendSMART trade dress are Worth Beauty's automated makeup brushes, or are sponsored by, or connected or affiliated with Worth Beauty or its blendSMART makeup applicators.

58. Defendants' conduct and actions have caused or are likely to cause confusion, mistake, or deception in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

59. As a result of such infringement, Worth Beauty has suffered damages and sustained injury to its goodwill and business reputation symbolized by the blendSMART intellectual property, including the blendSMART trade dress.

60. Further, as a result of such infringement, Defendants have made unjust profits and ill-gotten gains from the marketing, promotion, distribution, and sale of its products by trading the intellectual property associated with the blendSMART intellectual property, including the blendSMART trade dress.

**COUNT III: FEDERAL UNFAIR COMPETITION AND
FALSE DESIGNATION OF ORIGIN**

61. Worth Beauty refers to and incorporates herein the allegations of Paragraphs 1 through 60 above.

62. Defendants conduct and actions set forth above constitute unfair competition, and false designation of origin in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a). Defendants have intentionally engaged in conduct that constitutes false advertising, false designation of origin, false or misleading representation of fact tending wrongfully and falsely to describe or represent a connection between Worth Beauty's automated makeup brush and Defendant's automated makeup brush, and an infringement of Worth Beauty's trade dress rights.

63. Defendants' use of Worth Beauty's intellectual property has caused and is likely to cause confusion, mistake, or deception in that purchasers and others are likely to assume that Defendants' automated makeup brushes marketed under Worth Beauty's blendSMART trade dress are Worth Beauty's automated makeup brushes, or are sponsored by, or connected or affiliated with Worth Beauty or its blendSMART makeup applicators.

64. Defendants' conduct and actions have caused or are likely to cause confusion, mistake, or deception in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

65. As a result of such infringement, Worth Beauty has suffered damages and sustained injury to its goodwill and business reputation symbolized by the blendSMART intellectual property, including the blendSMART trade dress.

66. Further, as a result of such infringement, Defendants have made unjust profits and ill-gotten gains from the marketing, promotion, distribution, and sale of its products by trading the intellectual property associated with the blendSMART intellectual property, including the blendSMART trade dress.

COUNT IV: COMMON LAW TRADE DRESS INFRINGEMENT

67. Worth Beauty refers to and incorporates herein the allegations of Paragraphs 1 through 66 above.

68. Defendants' conduct and actions set forth above constitute trade dress infringement in violation of the common law of Texas.

69. As a result of such infringement, Worth Beauty has suffered damages and sustained injury to its goodwill and business reputation symbolized by the blendSMART intellectual property, including the blendSMART trade dress.

70. Further, as a result of such infringement, Defendants have made unjust profits and ill-gotten gains from the marketing, promotion, distribution, and sale of its products by trading the intellectual property associated with the blendSMART intellectual property, including the blendSMART trade dress.

COUNT V: FEDERAL TRADEMARK INFRINGEMENT

71. Worth Beauty refers to and incorporates herein the allegations of Paragraphs 1 through 70 above.

72. Defendants' actions and conduct set forth above violate Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1). Defendants' marketing, promotion, distribution, offering for sale and sale of the sonic**BLEND** trademark is likely to cause confusion, mistake, or deception as to the course, affiliation, sponsorship, or authenticity of Defendants' goods. Defendants have also marketed, promoted, distributed, offered for sale, and sold their sonic**BLEND** brush using Worth Beauty's other trademarks, including "A Revolution in Makeup Application." As a result of Defendants' unauthorized use of trademarks that are confusingly similar to Worth Beauty's registered mark, the public is likely to believe that Defendants' products have been manufactured, approved by, or are affiliated with Worth Beauty and blend**SMART**.

73. Defendants' unauthorized use of confusingly similar trademarks falsely represents Defendants' products as emanating from or being authorized by Worth Beauty. Defendants' unauthorized activities undermine Worth Beauty's goodwill that would be otherwise associated with the blend**SMART** product line and negatively impact Worth Beauty's ability to develop and promote the blend**SMART** brand and to have that brand associated exclusively with its own products.

74. As a result of such infringement, Worth Beauty has suffered, and will continue to suffer, substantial damages. Further, as a result of such infringement, Defendants have made unjust profits and ill-gotten gains from the marketing, promotion, distribution, and sale of its products. Worth Beauty is entitled to recover damages, including any and all profits Defendants have made as a result of their wrongful conduct.

75. In addition, because Defendants' infringement is willful, the award of damages and profits should be trebled pursuant to 15 U.S.C. § 1117(b).

76. Worth Beauty is entitled to recover its attorneys' fees and costs pursuant to 15 U.S.C. § 1117.

COUNT VI: COMMON LAW TRADEMARK INFRINGEMENT

77. Worth Beauty refers to and incorporates herein the allegations of Paragraphs 1 through 76 above.

78. Defendants' actions and conduct set forth above constitute trademark infringement in violation of federal and Texas common law. Defendants' marketing, promotion, distribution, offering for sale and sale of the sonicBLEND trademark is likely to cause confusion, mistake, or deception as to the course, affiliation, sponsorship, or authenticity of Defendants' goods. Defendants have also marketed, promoted, distributed, offered for sale, and sold their sonicBLEND brush using Worth Beauty's other trademarks, including "A Revolution in Makeup Application." As a result of Defendants' unauthorized use of trademarks that are confusingly similar to Worth Beauty's registered mark, the public is likely to believe that Defendants' products have been manufactured, approved by, or are affiliated with Worth Beauty and blendSMART.

79. Defendants' unauthorized use of a confusingly similar trademark falsely represents Defendants' products as emanating from or being authorized by Worth Beauty. Defendants' unauthorized activities undermine Worth Beauty's goodwill that would be otherwise associated with the blendSMART product line and negatively impact Worth Beauty's ability to develop and promote the blendSMART brand and to have that brand associated exclusively with its own products.

80. As a result of such infringement, Worth Beauty has suffered, and will continue to suffer, substantial damages. Further, as a result of such infringement, Defendants have made unjust profits and ill-gotten gains from the marketing, promotion, distribution, and sale of its products. Worth Beauty is entitled to recover damages, including any and all profits Defendants have made as a result of their wrongful conduct.

COUNT VII: COMMON LAW UNFAIR COMPETITION

81. Worth Beauty refers to and incorporates herein the allegations of Paragraphs 1 through 80 above.

82. Defendants' conduct and actions set forth above constitute unfair competition in violation of the common law of Texas.

83. As a result of such unfair competition, Worth Beauty has suffered damages and sustained injury to its goodwill and business reputation symbolized by the blendSMART intellectual property, including the blendSMART trade dress.

84. Defendants' unauthorized use of confusingly similar trademarks, marks, logos, videos, marketing, packaging, and trade dress falsely represents Defendants' products as emanating from or being authorized by Worth Beauty. Defendants' unauthorized activities undermine Worth Beauty's goodwill that would be otherwise associated with the blendSMART product line and negatively impact Worth Beauty's ability to develop and promote the blendSMART brand and to have that brand associated exclusively with its own products.

85. Further, as a result of such unfair competition, Defendants has made unjust profits and ill-gotten gains from the marketing, promotion, distribution, and sale of its products by trading on the intellectual property associated with the blendSMART intellectual property, including the blendSMART trade dress.

86. In addition, Worth Beauty will be irreparably harmed and damaged by the continuation of such unfair competition.

COUNT VIII: UNJUST ENRICHMENT

87. Worth Beauty refers to and incorporates herein the allegations of Paragraphs 1 through 86 above.

88. Defendants have made unjust profits from the sale of its good by trading on the trading on the intellectual property associated with the blendSMART intellectual property, including the blendSMART trade dress and the copyright protected blendSMART videos.

89. Defendants conduct and actions set forth above constitute unjust enrichment under the common law of Texas.

90. Worth Beauty is entitled to disgorgement of the unjust profits made by Defendants.

**COUNT IX: ADVERTISING INJURY THROUGH MISAPPROPRIATION
OF ADVERTISING IDEAS**

91. Worth Beauty refers to and incorporates herein the allegations of Paragraphs 1 through 90 above.

92. Defendants have advertised their sonicBLEND automatic makeup brush in the same manner as Worth Beauty, misappropriating the advertising ideas of Worth Beauty.

93. Defendants have used Worth Beauty's trademarks, trade dress, marks, logos, catch phrases, and three product and tutorial videos to market and promote a product Defendants distribute and sell to compete with Worth Beauty's blendSMART brush. The scripts, shot types, sequencing, product shots, on-graphics, look, and feel of the three videos published by Defendants and used to market, promote, and sell its competing product were copied directly from Worth Beauty's three promotional and tutorial videos.

VI. JURY TRIAL

93. Pursuant to Fed. R. Civ. P. 38 and 39, Worth Beauty hereby demands a trial by jury.

VII. PRAYER

WHEREFORE, Plaintiff Worth Beauty LLC prays that the Court grant the following relief against Defendants Michael Todd Beauty LP and MTTO LLC:

A. Judgment in favor of Plaintiff Worth Beauty LLC and against Defendants Michael Todd Beauty LP and MTTO LLC;

B. Maximum statutory damages in the amount of \$150,000 per work infringed under 17 U.S.C. § 504(c), or alternatively, Worth Beauty LLC's actual damages and the profits of Defendants that are attributable to the violations alleged herein pursuant to 17 U.S.C. § 504(b);

C. All damages sustained by Worth Beauty LLC in an amount to be determined at trial based on Defendants' infringement of Worth Beauty LLC's trademark, infringement of Worth Beauty's distinctive trade dress in overall appearance of its automated makeup brush and associated packaging and marketing, false designation of origins, descriptions, and representation of their automated makeup brush, and acts of unfair competition against Worth Beauty LLC;

D. Damages awarded under 15 U.S.C. § 1117(a) in the amount of total profits received by Defendants from, and any damages sustained by Worth Beauty LLC as a result of, Defendants' sales of products infringing Worth Beauty LLC's trademarks or trade dress, in an amount to be determined at trial;

E. Enhanced damages awarded under 15 U.S.C. § 1117(a) up to three times the amount found as actual damages for Defendants' trademark and trade dress infringement and false designations of origins, descriptions, and representations in an amount to be determined at trial;

F. Damages in the amount of total profits received by Defendants from, and any damages sustained by Worth Beauty LLC as a result of, Defendants' common law trade dress infringement, common law trademark infringement, unfair competition, and unjust enrichment in an amount to be determined at trial;

G. Attorneys' fees and costs under 17 U.S.C. §§ 505 and 117(a);

H. Award of Interest and costs; and

I. Such other and further relief as is just and proper.

Respectfully submitted

ANDERSON & CUNNINGHAM, P.C.

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